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No 87-2105

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

STANLEY E. LINER, *et al.*,
Petitioners,

v.

TERREBONNE PARISH SCHOOL BOARD, *et al.*,
Respondents.

On Writ of Certiorari to the Court of Appeal, First Circuit, State of Louisiana

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BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioners contend that the Louisiana trial court and Court of Appeal violated their equal protection and due process rights in adjudicating title to disputed real property to the Terrebonne Parish School Board on behalf of the State of Louisiana rather than to them. However, as set forth in the "Reasons for Denying the Writ," below, this case involves nothing more than a routine property title dispute, fully adjudicated on the merits under the same procedural rules applicable in all such disputes. No special consideration was given to the fact that one of the litigants is a public entity. Petitioners' constitutional rights are not violated by the decisions of the trial court and the Court of Appeal, and their petition should be dismissed or denied.

LIST OF PARTIES

Petitioners' petition correctly sets forth the list of parties in interest. This Brief in Opposition is submitted on behalf of The Kilroy Company of Texas, Inc. ("Kilroy") and Placid Oil Company ("Placid"). Kilroy is a privately-owned corporation and has no subsidiaries or affiliates which are not wholly-owned. Placid, likewise, has no subsidiaries or affiliates which are not wholly-owned.

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BRIEF IN OPPOSITION

STATEMENT OF THE CASE

The relevant facts are set forth in the trial court's "Reasons for Judgment," (Petition, pages 43-56), and in the opinion of the Louisiana Court of Appeal (Petition, pages 57-69, and published at 521 So.2d 1173) and need only be restated briefly here.

This case involves a dispute between the Liners, as plaintiffs, and the State of Louisiana through the Terrebonne Parish School Board, Placid, and Kilroy, as defendants, regarding whether two tracts of land are owned by the State of Louisiana or are owned by the Liners. Kilroy and Placid are the mineral (oil and gas) lessees of the School Board and, as such, are defendants aligned with the School Board. The Liners brought suit seeking

a determination that the disputed tracts fall within property titled to them as part of Section 9 of Township 20 South, Range 16 East, Terrebonne Parish, Louisiana, and not within Section 16 of the same township, belonging to the State. The School Board, Kilroy, and Placid asserted that the disputed tracts both fall within Section 16, which belong to the State as Section 16 school lands, held for the benefit of the school children of the township.[1]

The trial court, the 32nd Judicial District Court for the Parish of Terrebonne, held a full trial on the merits. The burden of proof applicable to the case is set forth in La. Code Civ. P. art. 3654.[2] Stated simply, that article provides that where one party proves he is entitled to possession of the property, the burden is on the other party to prove his ownership; however, where neither party proves its right to possession, the court shall render judgment in favor of the person with the better title.

At trial, the Liners introduced proof of their possession of the property and argued that this possession created a presumption of ownership on their behalf. They argued that this presumption could only be rebutted by the School Board upon identifying the exact location of the original boundary line between Section 9 and Section 16, as established by the corner markers set by the government surveyor in 1838, and by showing that the land

[1] The Ordinance of May 20, 1785 of the First Continental Congress dedicated all sections numbered sixteen of every township for the use and benefit of the public schools and the school children of each township. These lands were transferred to the State of Louisiana, then the Territory of Orleans, by Congress by acts enacted on April 21, 1806 (2 Stat. 391, Ch. 39, Sec. 11) and on March 3, 1811 (2 Stat. 662, 665, Ch. 46, Sec. 10), and title was perfected in the State of Louisiana when the official government survey of the township, prepared by G.F. Connely, Deputy Supervisor, was approved by the Surveyor General of Louisiana on May 21, 1842.

[2] The text of Article 3654 is reprinted in the Petition, pages 39-40.

in question fell on the Section 16 side of this boundary line. As the passage of time has destroyed these markers, the Liners argued that the School Board could not meet this burden; thus, they contend that they should be adjudged the owners of the disputed tracts. The Liners relied on their alleged possession; they did not prove the location of the boundary line or that the tracts in question fell within Section 9. Indeed, their expert did not disagree with the testimony of the School Board's expert that the tracts fell within Section 16.

The School Board also introduced evidence showing its possession of the property. Additionally, it called an expert land surveyor who re-traced the boundary line by using natural landmarks and making prorations and adjustments in accordance with the *Manual of Instructions for the Surveying of Public Lands*, prepared by the U.S. Department of the Interior, which defines the rules for locating township and section corners.

The trial court, interpreting Article 3654, found that since the Liners and the School Board both had exercised possession, neither was entitled to a presumption of possession so as to place the burden of proof of ownership on the other party. The court found that the alternative burden set forth in that article applied; thus, title to the disputed tracts vested in the party who proved better title. The court credited the testimony of the School Board's surveyor as properly and correctly retracing the boundary line between Sections 9 and 16. This evidence demonstrated that all but an inconsequential corner of the property in question fell within Section 16 and was the property of the State of Louisiana. Thus, the trial court entered judgment in favor of the School Board, Kilroy and Placid.

The Louisiana Court of Appeal, First Circuit, affirmed the trial court's judgment, finding that under Article 3654, the School Board proved better title. It rejected the Liners' argument that the School Board could not

prevail except by establishing the dividing line between Section 9 and Section 16 by locating the exact location of the defunct corner markers, and affirmed the trial court's finding that the School Board had met its burden through its expert surveyor, who retraced the dividing line through sound and accepted surveying principles. The appellate court remanded solely so that the judgment could be recast to properly adjudicate the small "inconsequential" portion of the tract in question which fell in Section 9 to the Liners.

The Liners then filed a Petition for a Writ of Certiorari with the Supreme Court of Louisiana, which was denied on March 25, 1988. *See* Petition, page 1. They now file this Petition with this Court.

REASONS FOR DENYING THE WRIT

The Court either should dismiss or deny the petition, because this case does not present any, much less a substantial, federal statutory or constitutional question.

a. Equal Protection

The Liners contend that the decision of the Louisiana Court of Appeal violated their constitutional right to *equal protection*, because that court's decision imposed a lesser burden on the School Board in proving its title to the property than would have been applicable had a private litigant been involved. They argue that had a private litigant, rather than the School Board, been the primary defendant, their possession would have created a presumption of ownership of the disputed land under Article 3654(1), placing the burden on the state to prove ownership. They claim that, because the School Board, a public body, was the defendant, they were denied the benefit of this presumption.

This argument is frivolous. Assuming that treating a public entity differently from a private individual consti-

tutes an equal protection violation (the Liners cite no jurisprudence or other authority in support of this proposition), there is no violation, because the courts below gave no special treatment to the School Board. The courts below did not deny the Liners the benefit of the Article 3654(1) presumption, because the School Board appearing for the State was a public party. Rather, the courts below found the presumption inapplicable here as a matter of state law, because neither party had proven the state law prerequisite for the presumption's application—neither party proved undisputed possession vis-a-vis the other. There is no hint or suggestion in either the opinion of the trial court or the opinion of the Court of Appeal that a different burden, standard, or presumption was applied or denied because of the School Board's status as a public entity.

Simply stated, there can be no equal protection violation here, because there was no unequal or disparate treatment.

b. Due Process

The Liners argue that the judgment of the Louisiana courts deprives them of their property rights without due process of law. While their argument is imprecise, they appear to argue that the original 1838 government survey of the township, particularly, the defunct markers and monuments from which the boundary line between Section 9 and Section 16 were determined in 1838, constitute the only valid evidence of the boundary between the two sections. Thus, the Liners conclude that the use of any survey to retrace the boundary is arbitrary and deprives them of their property without due process of law.

This argument, like the equal protection argument, presents no constitutional question. The Liners merely *allege* a constitutional violation. They assert no concrete argument specifically identifying how they were denied

due process. They cite to no jurisprudence or other authority of any kind explaining how the judgments entered below violate their rights. In any event, the writ should be denied, because, even construing their argument liberally, their due process rights were not violated.

i. *Procedural Due Process*

Procedural due process requires that a person be afforded notice and an opportunity for a hearing before he is deprived of life, liberty or property. *See, e.g., Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985). Here, the Liners commenced the proceeding seeking to establish their ownership of the property; they were afforded a full trial on the merits where they were entitled to present evidence and argument in support of their claim. Additionally, they were afforded an appeal of right, where they again advanced their arguments. They clearly were afforded procedural due process.

ii. *Taking of Property*

The adjudications below do not constitute a "taking" of property in violation of the Fifth and Fourteenth Amendments. This is not a case, like the "takings" previously found by this Court,[3] where governmental action amounted to deprivation or interference with property or a property right *clearly* held by a party. Rather, this case involved a dispute between the parties as to who owned the tracts, and thus had the property rights to the land in question. The courts below gave the School Board no special treatment; as the opinions below make

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[3] *See e.g., Nollan v. California Coastal Commission*, 483 U.S. ——, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980); *Kaiser Aetna v. United States*, 444 U.S. 164 (1979).

clear, they tried and reviewed this title dispute under the same procedural rules applicable to a similar dispute between private land owners. There was no governmental action taking from the Liners any property in which they had a clear right; here, the governmental action was to determine who had property rights to the tracts in question. As almost every case has a winner and a loser, if the Liners' argument were accepted, it would lead to the absurd conclusion that the judgment against the loser always constitutes a "taking" in violation of due process.

CONCLUSION

This case merely involves a title dispute between two adjacent landowners. The Liners, unsatisfied with the result below, are attempting to elevate this state law matter into a constitutional case. The courts below decided this matter fairly and indiscriminately. As there is no constitutional question involved, much less any substantial question, the Court should dismiss or deny petitioner's petition for a writ of certiorari.

Respectfully submitted,

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